

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dale D. Keene
SSN XXX-XX-6246

CHAPTER 7 CASE

CASE NO. 04-50790 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Washington Mutual Home Loans (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 8, 2004, at 1:30 p.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 2, Fourth Floor of the above entitled Court located at U.S. Courthouse, 515 West First Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 3, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than August 30, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 9, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$95,650.00, as evidenced by that certain mortgage deed dated October 17, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated October 17, 2003, executed by Dale D. Keene, a married man, and Kathleen R. Keene, his wife, as joint tenants, recorded November 15, 2003, as Document No. 00924138, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in St. Louis County, Minnesota and is legally described as follows to-wit:

S1/2 of NE1/4 of NW1/4 and S1/2 of N1/2 of NE1/4 of NW1/4, all in Section 21,
Township 54, Range 19.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of August 11, 2004, Debtor is delinquent in the making of monthly payments as required for the months of February, 2004 through August, 2004, inclusive, in the amount of \$815.65 each; accruing late charges and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$52,000.00 subject to Secured Creditor's mortgage in excess of \$95,510.19.

Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

13. Kathleen R. Keene is a co-debtor pursuant to 11 U.S.C. § 1301. Secured Creditor moves the Court for an Order for judgment that the automatic stay be lifted with respect to her interests

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 11th day of August, 2004.

WILFORD & GESKE

By /s/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

0924138

Office of the County Recorder
St. Louis County, MinnesotaRecorded on 11/15/2003
at 7:32 AM

Document No. 00924138

Mark A. Monseill
County RecorderBy B Talbot, Deputy
AFR 100809

DO NOT REMOVE

No. 175761 Date 10-29-03
Registration Tax of \$ 220.00
By Charles D. McFaul County Auditor
By BLG Deputy
Checked by BLG Cashier
OCT 30 2003

[Space Above This Line For Recording Date]

MORTGAGE

REFERENCE

MIN 100112065676688505

Return To:

MIT LENDING
DEMING PARK BUILDING
1360 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53662
ATTN: FINAL DOCS DEPARTMENT**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated October 17, 2003 together with all Riders to this document.

Return to:
St Louis Co Title
AFR # 100809
Chk 20 Chk

40102916

MINNESOTA-Single Family-Forme enarpeddle Mac UNIFORM INSTRUMENT WITH GRANT

Form 3424 4/01

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Printed: BLG - KKVisit www.mn.gov for more information - (609) 31-7281

20121-01

EXHIBIT A

0924138

(B) "Borrower" is DALE D KEENE, A MARRIED MAN, AS JOINT TENANTS, KATHLEEN R KEENE, *his wife*

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Fillet, MI 48301-2026, tel. (888) 679-MERS.

(D) "Lender" is ARROWHEAD MORTGAGE, INC.

Lender is a CORPORATION

organized and existing under the laws of THE STATE OF MINNESOTA
Lender's address is 4816 BURNING TREE ROAD, SUITE 202
DULUTH, MINNESOTA 55811

(E) "Note" means the promissory note signed by Borrower and dated October 17, 2003

The Note states that Borrower owes Lender Ninety-Five Thousand Six Hundred Fifty and 00/100 Dollars

(U.S. \$ 95,650.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2033

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) (specify)

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

40102916

ARROWHEAD-IA(MK) (0000003)

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www. *ARROWHEAD* *ARROWHEAD*

Form 3084 1/01



201274-02

0924138

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

 (Seal)
 DALE D KEENE/A MARRIED MAN AS -Borrower
 JOINT TENANTS
 KATHLEEN R KEENE

 (Seal)
 -Borrower

Kathleen R Keene (Seal)
 KATHLEEN R KEENE -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

**KATHLEEN R KEENE IS EXECUTING THIS MORTGAGE SOLELY FOR THE PURPOSE OF WAIVING ANY AND ALL MARITAL AND HOMESTEAD RIGHTS.

40102916

SA(MM) (9904)42

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Form 3024 1/01

20121-74

0924138

STATE OF MINNESOTA, ST. LOUIS

County are

On this 17th day of October, 2003, before me appeared
 DALE D KEENE, A MARRIED MAN, AS JOINT TENANTS, KATHLEEN R KEENE**, *WFO*

wife

to me personally known to be the person(s) described in and who executed the foregoing instrument and
 acknowledged that he/~~she/they~~ executed the same as his/her/~~their~~ free act and deed.


 Name: *PB*

My Commission Expires: 1-31-05



This instrument was drafted by:
 ARROWHEAD MORTGAGE, INC.
 4816 BURNING TREE RD
 DULUTH, MINNESOTA 55811

Tax statements for the real property described in this instrument should be sent to:
 MIT LENDING, ITS SUCCESSORS AND/OR ASSIGNS
 33 MAIDEN LANE, 6TH FLOOR
 NEW YORK, NEW YORK 10038

40102916

 9A(MN) (6000).02

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Initials: *KK*

Form 3024 1/01



20121-15

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dale D. Keene
SSN XXX-XX-6246

CHAPTER 7 CASE

CASE NO. 04-50790 GFK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of August 11, 2004, Debtor is delinquent for the monthly payments as required for the months of February, 2004 through August, 2004, in the amount of \$815.65 each; accruing late charges and attorneys fees and costs of \$675.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$52,000.00 subject to Secured Creditor's mortgage in excess of \$95,510.19.

Since this is a liquidation case, no reorganization is being attempted.

II. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 1301(c) WHERE THE INTEREST OF THIS SECURED CREDITOR

WOULD BE IRREPARABLY HARMED BY CONTINUATION OF SUCH STAY.

Kathleen R. Keene is a co-debtor pursuant to 11 U.S.C. § 1301 and the non-debtor party in these proceedings and has received the consideration for the claim held by Secured Creditor. Neither the debtor nor Ms. Keene provided for the payments referenced herein.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 11th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Dale D. Keene

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-50790

STATE OF GEORGIA

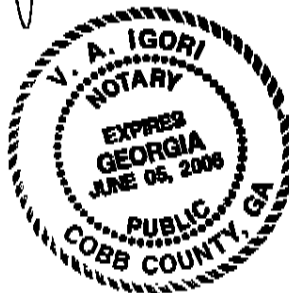
COUNTY OF FULTON

Kim Thompson, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.

Kim Thompson

Subscribed and sworn to before me this
4 day of August, 2004.

Notary Public [Signature]



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dale D. Keene
SSN XXX-XX-6246

CHAPTER 7 CASE

CASE NO. 04-50790 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 11, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Kim Thompson, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Dale D. Keene
PO Box 73
Hibbing, MN 55746

Robert R. Kanuit
4815 W Arrowhead Rd Ste 230
Hermantown, MN 55811

Kathleen R. Keene
PO Box 73
Hibbing, MN 55746

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Peter C. Greenlee
Greenlee Law Office
PO Box 1067
Twig, MN 55791

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 11th day of August, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dale D. Keene
SSN XXX-XX-6246

CHAPTER 7 CASE

CASE NO. 04-50790 GFK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Washington Mutual Home Loans (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 8, 2004, at U.S. Courthouse, 515 West First Street, Duluth, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 and § 1301 with regard to that certain mortgage deed dated October 17, 2003, executed by Dale D. Keene, a married man, and Kathleen R. Keene, his wife, as joint tenants, recorded November 15, 2003, as Document No. 00924138 covering real estate located in St. Louis County, Minnesota, legally described as follows, to-wit:

S1/2 of NE1/4 of NW1/4 and S1/2 of N1/2 of NE1/4 of NW1/4, all in Section 21,
Township 54, Range 19

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court